IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 890 OF 2005

Kashinath Baba Asbe & ors. ... Appellants

V/s

Dashrath Maqllu Lokare & ors. ... Respondents

Mr. Shiva Patil holding for M. Deepak A. Patil for the appellants.

Mr. R.V. More for the respondent No.8.

CORAM: P.V. KAKADE, J.

DATED: 6TH SEPT., 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Pandharpur, dated 12.8.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, S.D., Pandharpur, dated 30.11.1999 dismissing the plaintiffs' suit for declaration and injunction against the defendants.

2. I have heard the learned counsel for both parties. Perused the record.

3. Perusal of the record shows that the plaintiffs came with the case that they are the project affected persons and owned the suit property but it was acquired for the particular public purpose. The property Gat No.18 admeasuring 3 Hectares and 58 Ares, according to the plaintiffs, belonged to them and out of this Gat number, the area of 1 Hectare and 56 Ares from old Survey No.5/1 belonged to plaintiff No.1 and area of 2 hectares and 2 Ares from old Survey No.5/2 belonged to plaintiff Nos. 2 to 5 was acquired by the defendant No.6. Gat No.18 is formed from old Survey Nos. 5/1 and 5/2.

4. Plaintiff No.1 is a nephew of plaintiff Nos. 2 to 5. Defendant Nos. 1 to 5 are persons affected by project, namely, Ujani Dam. They got the land for rehabilitation. Defendant No.6 issued notices to the plaintiffs for acquisition and got possession of the land acquired on 24.5.1974. Since the time of taking possession from the plaintiffs, defendant Nos. 1 to 5 did not come for vahiwat of the land allotted to them. It is alleged that the defendant No.6 has acquired the land of plaintiffs' without any legal necessity. Thus the acquisition by defendant No.6 and the making of award as per Sec.12(2) of the Land Acquisition Act is

illegal. Thus the defendant No.6 got illegal possession from the plaintiffs on 24.5.1974 and handed over the said possession to defendant Nos. 1 to 5. Defendant Nos. 1 to 5 did not enjoy the suit property for the purpose for which it was allotted to them and have kept it follow. Therefore, the plaintiffs moved an application to the Divisional Commissioner, Pune, on 8.10.1986 making the request for deleting the land acquired from the acquisition proceeding. It was further alleged that defendant No.8, on 26.8.1974 though he has no right, prepared a bogus and hollow agreement of sale from defendant No.1. It is contended that by agreement of 1974, the defendant No.4 does not get any right in the suit property or possession as the plaintiff Nos. 1 to 5 have right to repurchase the suit property. It is alleged that the agreement of sale in favour of defendant No.8 is illegal and, as such, the suit for declaration and injunction came to be filed.

Defendants contested the suit on various grounds inter-alia denyiung the allegations and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs

failed to prove that they were in possession of the suit property and also failed to prove that they had any preferential right to purchase the suit property. On such and other grounds, the suit came to be dismissed.

The appeal was carried to the District Court, Pandharpur. The learned Addl. District Judge, after hearing both parties, dismissed the appeal and hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this case. The only question sought to be raised is to the effect that the plaintiffs have preferential right to purchase the suit property and, therefore, the entire suit transaction and transfer of the property in favour of the defendants is rendered illegal. In this connection, it is obvious that Sec. 23 of the Hindu Succession Act cannot be made applicable here to invoke preferential right. The learned counsel for the appellants sought to rely upon the Rehabilitation Scheme in order to seek preferential right to repurchase the suit property, however, he failed to show any provision under the said scheme giving him preferential right in that regard. In doing so, it was also alleged that

defendant No.8 Tahsildar had committed fraud as he was not in a position to purchase the property because he was a public servant. However, in this regard, it must be noted that if at all any irregularity is committed by the defendant No.8, he would face the consequences independently but that cannot come in the way of the defendant Nos. 1 to 5 in holding the property illegaly transferred to them. Be that as it may, the fact remains that there is absolutely no substantial question of law and, as such, the appeal deserves to be dismissed.

In the result, the appeal stands dismissed with no order as to costs.

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